

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

77 Varet Holding Corp.,  
162-164 82nd St. LLC,

Case No. 22-42316-NHL  
Case No. 22-42569-NHL

Debtors.

Jointly Administered

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**MOTION FOR ORDER (i) AMENDING THE RETENTION OF ROSEWOOD REALTY GROUP AS BROKER; (ii) APPROVING BIDDING PROCEDURES TO BE USED IN CONNECTION WITH THE SALE, AND SCHEDULING A HEARING ON CONFIRMATION OF THE DEBTORS' JOINT PLAN ON SHORTENED NOTICE**

77 Varet Holding Corp. ("Varet") and 162-164 82nd St. LLC ("82nd St." and, collectively with Varet, the "Debtors") as and for their motion (i) to amend the Order retaining Rosewood Realty Group ("Rosewood") to act on behalf of the Debtor's estate to market the Property for sale at auction to correct the buyer's premium to be paid by third party bidders; (ii) for approval of proposed bidding procedures to be used in connection with the auction sale; and (iii) to schedule a hearing on confirmation of their joint Chapter 11 plan on shortened notice, respectfully states and alleges as follows:

**Scheduling A Confirmation Hearing on Shortened Notice**

1. The Debtors have proposed a Second Amended Chapter 11 Joint Plan of Reorganization (the "Plan") and to seek a hearing on confirmation of the Plan for late April, potentially April 27, 2023.

2. The Plan implements an agreement reached between the Debtors and their secured lender, East 82<sup>nd</sup> Holdco LLC (the "Lender"), pursuant to which the Debtors agreed to either refinance their debt prior to April 1, 2023, or in the event they cannot (and it now appears likely the refinancing will not be timely obtained), the Debtors have agreed to offer the residential apartment buildings located at 162-164 East 82nd Street, New York, NY (the "Property") owned

by 82nd St. for sale at public auction (the “Auction”). As part of this agreement, the Lender requires that the Auction be conducted, the Plan be confirmed and the sale closed no later than May 1, 2023.

3. Accordingly, the Debtors now file this motion seeking approval of bidding procedures for the conduct of the Auction, including setting dates for the Auction process. Additionally, the Debtors seek to set a date for confirmation of the Plan, to coincide with the hearing to approve the Auction results, so that the May 1 timeline can be met.

4. Following a hearing held on March 28, 2023, the Court approved the Debtors’ proposed disclosure statement, subject to a number of revisions and amendments being made, setting the stage for confirmation of the Plan (as it will likewise be amended in accordance with the comments spread on the record of the March 28, 2023 hearing. The revised papers and proposed Order approving the Disclosure Statement will be filed in the next day or two.

5. Rule 2002(b) requires 28 days’ notice of the time to object to confirmation, plus three additional days for service by mail. However, Rule 9006(c) permits the Court to shorten this notice period for cause. It is respectfully submitted that, given the timeframe required by the Lender, cause exists to shorten the notice period for confirmation of the Plan, so that a hearing is held, potentially on April 27, 2023, or such other date as is convenient to the Court which permits conduct of the Auction, approval of the Auction results, confirmation of the Plan and a closing on the sale all prior to the May 1, 2023 deadline.

#### **Correcting the Broker’s Retention Agreement**

6. In preparation for the sale, the Debtors also moved to approve the retention of Rosewood to act as broker, which motion was granted without objection following the March 28, 2023 hearing. The Order approving the retention is *sub judice*. In furtherance of the sale, the Debtor now seeks to correct an error in the Rosewood retention.

7. Through a word processing error, the employment agreement with the broker, Rosewood, the commission to be paid as a buyer's premium by a third party was misstated as being 2.75% instead of the agreed upon commission of 4.5%. The mistake was then carried through the motion papers in support of Rosewood's retention. Although the papers were reviewed by Greg Corbin, as well as the undersigned counsel for the Debtors, the error went uncorrected.

8. The error was realized during a conversation between Greg Corbin of Rosewood and the undersigned counsel for the Debtor following the May 28, 2023 hearing. It was always agreed that the rate commission would be 4.5% for a third-party sale, 1.5% for a credit bid by the Lender, and 1% in the event of a refinancing, rather than a sale.

9. Unfortunately, through the use of an old form from another case, the rate for a third-party sale of 2.75% was inadvertently unchanged, which went unnoticed. Since the 2.75% rate was included in the notice to creditors, after discussion with Mr. Corbin, it was agreed to submit the proposed retention Order with the rate set at 2.75%, but to make this application to correct the rate to the agreed upon 4.5%.

### **Approval of Bidding Procedures**

10. Finally, the Debtors seek approval of bidding procedures, a copy of which are annexed hereto as Exhibit "A" (the "Bidding Procedures"), to be used in connection with the Auction sale process. In connection therewith, the Debtors also seek the scheduling of a hearing to confirm the results of the Auction and finally approve the sale.

11. Pursuant to Administrative Order 557, the key provisions of the proposed Bidding Procedures of the Property are as follows:

- The Auction will be held on April 25, 2023 at 2:00 p.m. The Auction will be conducted via Zoom.
- the Successful Bidder (other than the Lender on a credit bid) must close title on or before May 1, 2023, time of the essence.

- The decisions relating to the conduct of the Auction are to be made by the Debtors and the Lender in consultation with Rosewood.
- The Lender (although not required to do so) shall be permitted to credit bid. If the Lender is the winning bidder at Auction, it shall be required to fund payments required under the Plan to the secured claims of New York State and NY City Water Board, all allowed Priority Claims and Administrative Expenses, inclusive of the Allowed Professional Fees, plus any outstanding U.S. Trustee fees, and the allowed claims of general unsecured non-insider creditors (collectively, these are the “Creditor Claims”), as well as the buyer’s premium of 1.5%.
- Prospective bidders (except the Lender) must submit a proposed bid in the minimum amount of \$17,945,000, sufficient to pay the Lender; (ii) the Creditor Claims (the “Initial Bid”); together with payment of a Buyer’s Premium of 4.5% (assuming that the proposed correction of the commission from 2.75% is approved). The minimum bid is subject to adjustment by the Debtors in consultation with the Lender and Rosewood.
- Prospective bidders (except the Lender) must present a good faith deposit in the amount of \$1.0 million on or before April 24, 2023 4:00 p.m. (the “Bid Deadline”) (the “Qualified Bid”). Subsequent bids shall initially be in increments of \$25,000.
- If no Qualified Bid is timely received from a Qualified Bidder, the Debtors shall file a Notice of No Auction and the Lender shall be deemed the Successful Bidder based upon its credit bid.
- A hearing to confirm the results of the Auction and finally approve the Sale shall be held on April 27, 2023 at \_\_:\_\_ .m. before the Hon. Nancy Hershey Lord via Zoom.
- the Successful Bidder must pay any required transfer taxes and any forms or applicable recording documents as required by applicable governmental authorities, together with the customary and fees and taxes associated in connection therewith usually paid by a purchaser of real property and the transactions hereunder to the extent such taxes are not exempt under the Confirmation Order.
- the Property is being sold free and clear of all liens, claims and encumbrances.
- the Property is being sold “as is,” “where is,” “with all faults,” and without any representations or warranties of any kind.
- All decisions regarding the sale, and any amendments or revisions to the Bidding Procedures, including changes in the schedule, shall be made by the Debtors in consultation with the Lender and Rosewood.

12. The Debtors submits that the Bidding Procedures are the product of discussions among the Debtors, the Lender and Rosewood, and are reasonable and customary. Accordingly, the Debtors believe that the Bidding Procedures now warrant Bankruptcy Court approval.

**WHEREFORE**, the Debtors respectfully requests that the Court enter an order consistent with the foregoing, together with such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
March 28, 2023

Goldberg Weprin Finkel Goldstein LLP  
*Attorneys for the Debtors*  
125 Park Avenue, 12<sup>th</sup> Floor  
New York, New York 10017  
(212) 221-5700

By: /s/ J. Ted Donovan, Esq.